

(i) New and material evidence exists that was not readily available at the time the initial determination was made;

(ii) A clerical error in the computation of payments was made; or

(iii) The evidence that was considered in making the determination clearly shows on its face that an error was made.

(5) For purposes of this section, CMS does not find good cause if the only reason for reopening is a change of legal interpretation or administrative ruling upon which the initial determination was made.

(6) A decision by CMS not to reopen an initial or reconsidered determination is final and binding and cannot be appealed.

§ 423.892 Change of ownership.

(a) *Change of ownership.* Any of the following constitutes a change of ownership:

(1) *Partnership.* The removal, addition, or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable State law.

(2) *Asset sale.* Transfer of all or substantially all of the assets of the sponsor to another party.

(3) *Corporation.* The merger of the sponsor's corporation into another corporation or the consolidation of the sponsor's organization with one or more other corporations, resulting in a new corporate body.

(b) *Change of ownership, exception.* Transfer of corporate stock or the merger of another corporation into the sponsor's corporation, with the sponsor surviving, does not ordinarily constitute change of ownership.

(c) *Advance notice requirement.* A sponsor that has a sponsor agreement in effect under this part and is considering or negotiating a change in ownership must notify CMS at least 60 days before the anticipated effective date of the change.

(d) *Assignment of agreement.* When there is a change of ownership as specified in paragraph (a) of this section, and this results in a transfer of the liability for prescription drug costs, the existing sponsor agreement is automatically assigned to the new owner.

(e) *Conditions that apply to assigned agreements.* The new owner to whom a sponsor agreement is assigned is subject to all applicable statutes and regulations and to the terms and conditions of the sponsor agreement.

§ 423.894 Construction.

Nothing in this part must be interpreted as prohibiting or restricting:

(a) A Part D eligible individual who is covered under employment-based retiree health coverage, including a qualified retiree prescription drug plan, from enrolling in a Part D plan;

(b) A sponsor or other person from paying all or any part of the monthly beneficiary premium (as defined in § 423.286) for a Part D plan on behalf of a retiree (or his or her spouse or dependents);

(c) A sponsor from providing coverage to Part D eligible individuals under employment-based retiree health coverage that is—

(1) Supplemental to the benefits provided under a Part D plan; or

(2) Of higher actuarial value than the actuarial value of standard prescription drug coverage (as defined in § 423.104(d)); or

(d) Sponsors from providing for flexibility in the benefit design and pharmacy network for their qualified retiree prescription drug coverage, without regard to the requirements applicable to Part D plans under § 423.104, as long as the requirements under § 423.884 are met.

Subpart S—Special Rules for States-Eligibility Determinations for Subsidies and General Payment Provisions

§ 423.900 Basis and scope.

(a) *Basis.* This subpart is based on sections 1935(a) through (d) of the Act as amended by section 103 of the MMA.

(b) *Scope.* This subpart specifies State agency obligations for the Part D prescription drug benefit.

§ 423.902 Definitions.

The following definitions apply to this subpart: